



Washington State

Final Report of Survey of Eight States' Adult Protection System

**National Association of States United for Aging and Disabilities
(NASUAD)**

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Executive Summary

The State of Washington (WA) recognizes opportunities to improve the state's adult protection system¹ and seeks through continuous quality improvement processes to learn from the best administrative practices of other States in administering adult protection systems. Washington contracted with the National Association of States United for Aging and Disabilities (NASUAD) to research the practices of WA and other states in the administration of adult protection systems and to recommend changes that would improve Washington's systems, processes, and outcomes in dealing with abuse, neglect, and/or exploitation of older adults and persons with disabilities.

NASUAD, founded in 1964, represents the nation's 56 officially designated state and territorial agencies on aging. The Association's principal mission is to support visionary state leadership, advance state systems innovation, and articulate a national policy on vulnerable adults' rights and home and community based services for older adults and individuals with disabilities and their families. NASUAD has more than forty years of experience in consultation, training, and technical assistance. NASUAD supports professional development on the full range of policy, program, and management issues of concern to states. Its staff and consultants collectively have years of direct experience in administering state programs for adults including protection systems, aging, and disability resource centers, supportive services, and public benefit programs such as those supported with State and Medicaid funds.

Central to our research, we requested eight states to complete an on-line, adult protection system survey. We selected these states—Georgia (GA), Indiana (IN), Massachusetts (MA), Missouri (MO), North Carolina (NC), New Mexico (NM), New Jersey (NJ) and Washington (WA)—based on their similarity with WA in population, government structure, and their efforts to reform and balance long term care options.

After detailed analysis of the on-line survey data, we conducted telephone interviews with GA, MA, MO, NC, NM, and WA. The survey analysis and discussions with WA administrators and advocates led us to focus the telephone interviews on several key areas: standards of

¹ In this report, "adult protection system" is a generic term that indicates any combination of entities and processes that seek to protect adults from abuse, neglect, and/or exploitation, regardless of the setting. It may include community adult protective services (APS) and residential home protection services.

promptness for investigations; predetermined criteria for acceptance of reports of abuse; neglect and exploitation; client assessment tools; definitions of cases, substantiation of cases and substantiation rates; correlation between recidivism rate and case management; penalties for mandated reporters; intake and referral operations; and training. Additional aspects unique to states were also discussed. Summaries of each state's interview are included in Appendix-1 of the final report.

Recommendations, with several options and strategies for improvement of the adult protection system, are provided for Washington's administrators, policy makers, and advocates for review and final determinations. We recommend that Washington State:

- Develop APS case management for at-risk, vulnerable adults living in the community;
- Furnish APS staff with client assessment tools;
- Centralize the intake and referral operations for the reporting of adult abuse, neglect and exploitation;
- Expand specialized training for APS and Residential Cares Services (RCS) and develop specialized training for community partners;
- Develop financial and medical forensics resources;
- Improve timeliness of investigations by RCS and synchronization of complaint investigations between APS and RCS; and
- Amend statutes and/or administrative policies.

Additional resource for future guidance

The Government Accountability Office (GAO), under direction from the U.S. Senate Special Committee on Aging, is investigating the administration and organization of adult protective services for older adults. GAO officials began meeting and interviewing identified state leaders and APS workforces in the fall of 2009 to gather detailed information of APS programs for older adults. From these on-site visits, GAO researchers developed an electronic survey regarding APS programs for elders. Prior to the dissemination of their survey and during the development of the Washington State survey, GAO officials discussed the types of questions that their survey would entail. To the extent possible, similar questions were asked in the NASUAD/WA survey.

The GAO sent its survey to all fifty states during the same week that NASUAD and WA State began their survey of the eight states. The GAO predicts that it will deliver its report to the U.S. Senate Special Committee on Aging in 2011. During 2011, Washington State and the seven other states participating in the NASUAD/WA survey will have comparable data to the GAO survey data for all APS programs for elders in the United States.

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New Mexico - Michael Spanier, Kathleen Hart and Anthony Louderbough

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Summary of Interim Report

(Interim Report submitted July 29, 2010)

We requested eight states to complete an on-line, adult protection system survey. These states—Georgia (GA), Indiana (IN), Massachusetts (MA), Missouri (MO), New Jersey (NJ), New Mexico (NM), North Carolina (NC), and Washington (WA)—were selected based on their similarity with WA in population, government structure, and their efforts to reform and balance long term care options.

The administrators of the WA state Department of Social and Health Services (DSHS), members of the WA state Vulnerable Adults Study Group and NASUAD consultant used an iterative process to develop, review, and revise the Adult Protection System survey. We determined that *Survey Monkey*, an online instrumentality, was the most economical and reliable survey method for this project.

In addition to the advice from the state of WA administrators and advocates and officials of the Government Accountability Office (GAO), we asked current and former APS administrators and staff to test the draft survey questions. Their expertise and years of experience in the field work of adult protective services was invaluable in assuring the validity of the questions and accuracy of the verbiage used to describe common practices and terminology.

The survey contained sixty-six items, formatted as yes or no, multiple choice, and open ended. Some items requested data to be gathered and entered into the survey.

We solicited only one survey submission for each of the targeted states. This required multiple state program administrators to contribute in answering the questions. Details and summaries of the on-line surveys may be found in the Interim Report (July 29, 2010). Follow-up telephone interviews were conducted to discover more in-depth information that may be beneficial in the management of WA State's adult protection system and services to victims of abuse, neglect, and exploitation. After the review of the survey information, we jointly determined to conduct telephone interviews with GA, MA, MO, NC, NM, and WA.

Recommendations

Adult Protection System Quality and Capacity

Case Management

Analysis

WA's APS may arrange for state funded services for an APS client up to a cumulative maximum of ninety days during any twelve month period if there are no other sources of payment for the service. WA does not, however, provide case management services for APS clients. Case management activities often include the coordination of social and medical services, housing, transportation, etc. for a defined or extended period of time. Usually, case managers have contact with the person they are assisting at least once a month. States that provide either limited or on-going case management have strong opinions that the provision of case management decreases the potential for their clients to be victimized again.

Assessment Tools

WA APS staff does not use client assessment tools. States that provide APS case management for at-risk adults are also the states with the most assessment tools available for staff investigators/case managers.

GA, MA, MO, NC, and NM all have assessment tools. Some instruments have been developed "in-house", some shared by other states. Others are hybrid, state-specific, versions of Harmony APS software (commercial product).

Almost all staff in the states referenced above starts with what is commonly called a functional assessment of the client. After this initial assessment, they may also use additional assessment tools based on their initial findings. Staff may have available to them many different assessment tools. Examples are: (1) ability to consent, (2) environmental conditions, (3) financial dependency, (4) family/caregiver stress, (5) social isolation, (6) social support, (7) behavior problems, (8) cognitive status, (9) health, (10) depression, (11) mental health or emotional problems, (12) alcohol or drug abuse risk factors, (13) anger risk factors, (14) relationship problems, and (15) activities of daily living.

Recidivism

In protective services, “recidivism” customarily refers to victims, not offenders. Thus, a person who is victimized more than once is said to be a “recidivist.” WA’s APS client recidivism data for years 2007 through 2009 averages 18.1%.

Three states, GA, MO, and NC, which collect and report recidivism data, also provide unlimited APS case management for at-risk vulnerable, disabled or elderly adults. These states’ program directors feel passionately that there is a correlation between the ability to provide case management services, if the adult consents, and the reduced risk of a recurrence of abuse, neglect, and/or exploitation.

Of the states in this study collecting and reporting recidivism data, GA has the lowest rate of recurrence of victim abuse, neglect, and exploitation. The average recidivism percentage data for “on-going” cases for a three years period is 8.0 percent. The average recidivism percentage data for “reports investigated, closed and re-opened for a subsequent investigation” for the same three years period is 7.6 percent. Ongoing case management may be provided by APS to clients determined to be at-risk for further abuse, neglect, and/or exploitation. Unless the agency has court appointed guardianship case management duties, when the client is no longer at-risk (e.g., when resources that address the problem are secured), GA usually discontinues ongoing APS case management.

NC’s recidivism for any “person known to APS” over the past three years is 11.3 percent. NC’s best practice guidance for case management is for a period of three months. (NC does not have a statutory or administrative code requirement limiting case management provision.) After the need for protective services case management is over for the person at-risk, the county DSS may offer social services case management.

Possible Strategies

States may apply for a Medicaid waiver to provide Targeted Case Management to vulnerable, disabled adults a) potentially eligible for Medicaid, b) not living in a Medicaid certified long term care facility, and c) in need of case management to coordinate medical services. Although restrictions limit which APS clients can be covered, the use of Targeted Case Management provides some additional financial resources for case management.

HHS CMS has approved waivers to GA and NC for Targeted Case Management (TCM) and receives some Medicaid reimbursement for certain types of case management provided to adults eligible for specific Medicaid programs. Until two years ago, NM billed Medicaid TCM but

found that the costs associated with improving their data system for billing Medicaid outweighed the possible billings and reimbursement from TCM.

We recommend that WA consider providing case management initially for a specified period of time and under certain circumstances. We also recommend that, when federal or state funds become available, WA provide on-going case management for at-risk vulnerable adults.

APS staff should have available to them assessment tools to adequately interview and determine with the client the most appropriate options for case management and supportive services. All state staffs interviewed were willing to share their states' assessment tools.

The following are examples of how states define and limit case management services to the most vulnerable adults. These states have staff that has job responsibilities both for investigation and case management.

NM APS provides time-limited case management under the following circumstances: there is a substantiation of abuse, neglect or exploitation; no family member or surrogate is available to assist; no other source of funding or support available; income level—eligibility for Medicaid SNF care; and functional limitations with ADL or IADL.

NC provides case management for adults in need of protective services. Best practice guidance for case management is for a period of three months.

MA provides case management services for APS clients until the risks are addressed.

MO provides limited case management services for APS clients who meet their at-risk/protective service criteria.

Intake and Referral Operations

Analysis

Currently, WA has one statewide, 24 hours, toll free number (1-866-363-4276 ENDHARM) for the reporting of adult and child abuse, neglect, and exploitation. When people call this number, they speak to a person and are routed to appropriate regional toll-free numbers (seven different ones) for adult protective services (APS) or one statewide toll free number (1-800-562-6078) for the Complaint Resolution Unit (CRU). The CRU is responsible for accepting reports of alleged abuse, neglect, and exploitation of adults residing in licensed long term care facilities. The six regional APS offices are responsible for accepting reports of alleged abuse, neglect, and exploitation of adults in their own personal residences. The CRU and six regional APS offices have staff dedicated to the job responsibilities of intake and referral during office hours Monday through Friday. CRU and APS use different intake forms and IT systems to gather reports of adult abuse, neglect, and exploitation.

Possible Strategies

Intake and Referral Operations

We recommend that WA combine the CRU and six regional APS intake and referral operations (seven toll free numbers) into one statewide intake and referrals operation center, regardless of where the adult resides. We suggest two options for staffing.

Option 1: A staffing model could be designed to shift FTE positions to one central location for the purpose of intake and referrals.

Option 2: A virtual model could be designed in which designated FTE positions are responsible for the statewide call center operations from numerous locations around the state. These workers could work from an office or telework. **A time study of the ratio of worker to call volume for intake and referral should be conducted** to determine the appropriate number of FTEs needed to manage the intake and referral center.

The current **telephone capacity for the CRU should be evaluated to see if it can manage or can be upgraded to handle the additional staff usage and call volume.** The money to invest in the telephone system upgrade could come from the discontinued use of the seven regional APS toll-free numbers. If the intake and referral center workforce is allowed to telework, the State would experience a decrease in the square footage needed for office space. Telephone systems allow for supervisors to monitor workers' calls and records the length of time spent on calls per worker.

We recommend that, as possible, the same questionnaire be used for capturing the information upon intake regarding the alleged abuse, neglect, and exploitation regardless of where the vulnerable adult lives. When IT systems are upgraded, the data bases should be upgraded to by migrating the data between the CRU and APS systems. We all recognize that peoples' use of social supports and medical systems is fluid. Having the ability to track repeated occurrences of victim abuse, neglect, and/or exploitation regardless of where it occurs is important to reducing recidivism (recurrence of the victim being abused).

We recommend that RCS track client recidivism. Until IT systems are upgraded and potentially integrated for RCS and APS, RCS and APS could enter the client recidivism data—a relatively small number—into an Excel spreadsheet. The maintenance and sharing of these data between APS and RCS will allow the adult protection staff to track at-risk, vulnerable people between their residences and the continuum of care providers in WA State.

What survey states are doing that is similar

GA – one statewide intake and referral center for *APS only*, with use of central location staff and virtual staff in offices and telework offices throughout the state.

NM – one statewide intake and referral center for *all adult* abuse, neglect, and exploitation reports. Accepted reports are sent to local APS offices for investigation.

MA – one statewide intake and referral center for the *reporting of elder* abuse, neglect, and exploitation. Intake staff takes the reporters' information, complete reports and makes referrals.

MO – one statewide central registry unit with one toll free number for the reporting of *all adult* abuse, neglect, and exploitation reports. Accepted reports are sent to either APS or the Division of Regulation and Licensure for investigation.

Staff Training and Training for Community Partners

Analysis

WA provides twenty to twenty-five hours of classroom training and more than ten hours of “field” training for APS and CRU investigators. The numbers of hours of required training both in the classroom and “field” and the training topics were similar for all states participating in the survey. Due to innovation and budget constraints, many states have become more advanced in the use of web based technology to provide training to staff. WA interviewees report that much of their initial and on-going training for APS staff is done either by telecommunications (phone and computer) or by staff individually reviewing training modules on the DSHS website.

Possible Strategies

WA could **partner with one or more universities to develop training curricula** for investigative staff, train the trainers for future trainings, and/or provide training for new and senior investigative staff.

NJ reported that one of the things they were most proud of was their training program for APS staff.

Adult Protective Service Training provided by Rutgers University School of Social Work, Institute for Families has been the sole source for statewide training to Adult Protective Service Workers in NJ. This mandatory training consists of a sixteen day education forum in which the new worker becomes familiar with the many demanding facets of protecting, older adults, and disabled adults in NJ. This program began in collaboration with the NJ Department of Health and Senior Services, Division on Aging and Community Services and Rutgers University, School of Social Work in 1991 as a response to the need of a standardized program. In 1993, the program received the Brookdale Best Practices Training Award.

<http://socialwork.rutgers.edu/InstituteForFamilies/TrainingandEducation/>

NC's training curriculum is for staff and community partners. Staff training is provided statewide or regionally in face-to-face meetings, video conferencing, WebEx, and long distance learning in cooperation with satellite stations in universities and colleges. The state has core curricula which include basic APS training, assessing client capacity, and facility rules and regulations. NC also provides: training to new law enforcement cadets on adult abuse, neglect, and exploitation; training in partnership with domestic violence programs; training with banking/financial institutions regarding exploitation; and training with district attorneys.

Due to budget constraints, **GA** APS training is done primarily by Webcast. On average, there is at least one, one-hour training via Webcast each month. Specialty training is arranged by APS leadership to provide subject expertise. Routine training is also coordinated by the forensic specialist. APS, including its forensic staff, provides training on vulnerable adult abuse, neglect, and exploitation to law enforcement, code enforcement, medical examiners/ coroners, prosecutors, other professionals, students, and others in the community.

Forensics – Financial and Medical

Financial Exploitation

States said that they are seeing an increase in the number of reports of financial exploitation of vulnerable adults. Also, they sense that many incidents of financial exploitation go unreported because of the victim's embarrassment or cognitive inability to report the theft. Staff feel that there are strong connections between the economic recession, adult children losing their jobs and income, and increase in substance abuse among perpetrators. States candidly report that their adult protection system staff is not knowledgeable or trained on how to detect and investigate financial exploitation.

Analysis

WA reports that, over the past two years, approximately thirty-two percent (32%) of reports have involved financial exploitation. (One report may contain more than one allegation of abuse, neglect, and exploitation.) A very low percentage—approximately two percent—of financial exploitation reports is substantiated. WA APS and CRU investigators have not been trained in forensics accounting and the techniques of investigating financial exploitation.

Possible Strategies

Hiring expert staff

A few of our nation's largest universities offer a field of study and degrees for accounting and medical forensics. Forensic accounting is a rapidly growing area of accounting concerned with the detection and prevention of financial fraud. Forensic accountants are playing a more proactive risk reduction role by designing and performing extended procedures as part of statutory audits, acting as advisers, and conducting fraud prevention activities and education with financial institutions.

GA has created a small forensics team within its Division. GA hired a forensic nurse in SFY 2008 and is in the process of employing a forensic accountant in SFY2010. It reallocated vacant APS case manager positions to create the two forensic positions in the state office. The forensic staff trains APS case managers in awareness and detection, investigative techniques and evidence collection. APS case managers/investigators are able to take pictures and/or collect evidence for timely review by forensics staff either through digital records/pictures, webcam or on-site visits. Together, APS case managers/investigators and forensics staff work with local law enforcement, corners, financial institutions, prosecutors, and GA Bureau of Investigators.

Partnering with others

Several state APS programs coordinate forensic accounting education and training with financial institutions. **NC** has a curriculum for training banking/financial institution staff on financial exploitation of vulnerable adults. Many banking institutions now have on staff forensic accountants who have as part of their job responsibilities community education and prevention of financial exploitation.

Pursuing grants

The state of California has a five years grant from the Archstone Foundation to improve the quality and coordination of elder abuse and neglect services. The expansion of forensic centers and delivery of coordinated services to victims is part of the grant objectives. The Foundation is a non-profit grant making organization whose mission is to contribute toward the preparation of society in meeting the needs of an aging population.

Medical Forensics

MA has sexual assault teams comprised of professionals in all regions of their state. Teams meet quarterly to review cases and consult with experts by phone, if needed. Protocols for referral between the elder protective services staff and Sexual Assault Nurses (SANS) guide the teams. MA's expert consultant is Holly Ramsey Klawnsnick. In addition to case consultation, she trains protective services staff on sexual assault. MA began this work when they suspected an underreporting of sexual assaults on those sixty years of age and older. **This model team approach can be used for any topic area that data may reflect is a major concern for your state.**

According to our interview with WA state staff, the RCS has four certified forensics nurses. It is not currently a job requirement that these nurse positions be filled with forensics nurses. Since trained forensics nurses work in RCS, a **shared staffing model could be developed in which the forensics nurses act as consultants to RCS and APS** on difficult cases involving complex medical problems, physical trauma, and liaison with other medical professionals and law enforcement.

Priorities for Complaint Investigation and Improving Emergency Response

Analysis

Emergency response time for reports of vulnerable adult abuse, neglect, and exploitation challenges most state adult protection systems. States seeking to improve their response times use predetermined criteria for what constitutes an emergency. In addition, states have agreements (usually MOUs) with staff of sister agencies to work in coordination to handle emergency/priority cases and to relocate residents when licensed or unlicensed facilities are closed due to court order, loss of licensure, or loss of Medicaid/Medicare certification status, as well as during times of a natural or man-made disaster.

WA's response times differ for vulnerable adults living in the community and residents of licensed facilities. APS has three levels of promptness for investigations:

- High – a twenty-four hours to respond to threat of immediate harm, physical wounds and injuries requiring medical attention, significant harm and serious environmental threats;
- Medium – maximum of five days to respond to harm that is not life threatening (e.g., chronic self neglect and financial exploitation); and
- Low – maximum of ten days response where no harm has occurred or is about to occur, superficial injury, client removed from home, etc.

RCS CRU's standards of promptness for investigations:

- Two Days – life threatening, harm or risk of harm and sexual or physical assault;
- Ten Days – resident experienced harm but the caregiver has been removed or the resident is in the hospital;
- Twenty Days – facility report where there has been harm to a resident which was not life threatening;
- Forty-five Days – complaints regarding food, sanitation, etc.; and
- Ninety Days – the complaint is not life threatening and can wait until the next scheduled facility survey.

Strategies

Shared responsibility for emergency investigations

WA should consider having **memoranda of understanding (MOU) requiring that APS and CRU investigators share in the responsibility of investigating emergency (high level) abuse calls** regardless of where the vulnerable adult lives.

Standards of promptness for investigations

We recommend that APS and RCS have the same or similar standards of promptness for investigation. APS responds to high priority reports within twenty-four hours and RCS responds to a high priority report within two days. The maximum number of days for APS to respond to a low level priority is ten days. The maximum number of days for RCS to respond to a low level priority is twenty days. Some people might respond to this recommendation by saying that residents of facilities have fewer risks. Many of the licensed facilities in WA, however, have fewer than seven people living in the home and lower numbers of staff. Depending upon the population of residents, the risks for vulnerable adults may be as great as people living in their family homes.

Other states reported that they conduct investigations of allegations of abuse, neglect, and exploitation of residents in licensed facilities determined to be in imminent danger, having imminent risks, high risk of injury or harm within three to twenty-four hours. States whose protection staff investigates abuse of adults in their homes and long term care facilities had the same response time categories regardless of type of residence.

Emergency assistance for victims

We suggest that **financial resources be made available for protection staff to be able to meet the immediate needs of a victim in emergency situations.** States have made this resource available in two ways. Some states establish a State fund for the sole purpose of having financial resources available to relocate a person/victim to temporary safe housing, replacement of prescription medicines, replace broken glasses, emergency caregiver services not paid for by other sources, and other needs. Other states have made arrangements with providers to make available (pro bono or reduced rate) temporary housing or adult day services for victims. The states that have developed the latter model have not necessarily done this statewide but with a small group of willing providers mostly in urban areas.

Other States

NM has a response time of three hours for an emergency, face-to-face, visit with the alleged victim. Between the Department of Health, which oversees the investigation of abuse, neglect, and exploitation in licensed facilities and the Department of Aging, which administers the APS program, is an agreement (MOU) that state staff will get to any location (licensed or home) to investigate within three hours. One criterion for an emergency report is that law enforcement has reported the incident to the adult protection system. Additional criteria for prompt investigations in NM include a) a face-to-face visit with the alleged victim within twenty-four hours (category **P1**) and b) a face-to-face visit with the vulnerable adult within five calendar days (category **P2**).

MA divides standards of promptness for investigations of elders in the community into three categories. **Emergency** – An emergency requires a face-to-face meeting with alleged victim and investigation within five hours. This emergency involves the determination of imminent risks. **Rapid/Urgent** - A rapid or urgent response requires a face-to-face meeting with alleged victim and investigation within twenty-four hours. Supervisors determine whether a report is an emergency or a rapid/urgent referral based upon the information received during intake. For example, if the victim has been hospitalized and is not in imminent danger, he or she would be interviewed in the hospital within twenty-four hours and prior to discharge home. All other cases are investigated within five calendar days. All reports are screened by Protective Services (PS) supervisors and assigned priority status. Protective Services for citizens with disabilities (all types) and ages 18-59 are served by the Disabled Persons Protection Commission (DPPC). MA's standards of promptness for the DPPC are within twenty-four hours if a report is determined to indicate an emergency. The investigation of abuse reports that are determined to be non-emergencies must be completed within ten days.

NC APS handles the evaluations (investigations) for disabled adults eighteen years and older regardless of where they live. NC has three categories of standards of promptness for investigations. **Immediate** – an immediate investigation involves a report of an adult who is in imminent danger and is facing irreparable harm. **Emergency requiring an evaluation within twenty-four hours** – supervisors use their judgment to determine if a report requires an immediate evaluation or if the victim can be seen within twenty-four hours. **All other reports** of abuse, neglect, and exploitation require an evaluation within seventy-two hours.

MO APS has three categories of standards of promptness for investigations. **Class I** – reports involve life-threatening, imminent danger situations that indicate a high risk of injury or harm to an adult. Initial contact with an alleged victim is made as soon as possible, usually within twenty-four hours. **Class II** –reports involve situations that may result in harm or injury to an

adult but are not life threatening. Initial contact with an alleged victim is usually made within one week. **Class III** – reports involve non-protective situations or additional information on an open report. Complaint investigations of residents in long term care facilities are handled in accordance with state statute. Reports or complaints investigated are generally initiated within 24 hours.

GA has a MOU between the APS program, Department of Community Health Divisions of Health Care Facility Regulation, Medicaid, and Public Health to work together for the emergency relocation of residents from licensed and unlicensed facilities. Within the team, Public Health officials take the lead for relocation of residents from nursing care facilities and APS staff takes the lead for relocation of residents from assisted living facilities.

GA receives a state appropriation for an Emergency Relocation Fund. A description of the fund and its uses are in appendix two.

Statutory and Administrative Changes

Abuse Registries

Analysis

WA has two registries—a nurse aide registry and a home care aide referral registry. These registries apply to professional caregivers who abuse, neglect, or exploit vulnerable adults. The purpose of the Nurse Aide (NA) Registry is to maintain a database of individuals who meet the federal requirements to provide care giving to residents residing in skilled nursing facilities in Washington State. The federal Omnibus Reconciliation Act of 1987 (OBRA '87) provides requirements related to nurse aide training and competency evaluation.² The DSHS ADSA RCS manages the Nurse Aide Registry. The Registry informs nursing home staff, through an inquiry process, of persons who are ineligible to work in a skilled nursing home due to findings of abuse, neglect, or misappropriation of property.

² Each State must establish and maintain a registry of nurse aides that meets the requirement of this section.

The registry--

- (1) Must include as a minimum the information contained in paragraph (c) of this section;
- (2) Must be sufficiently accessible to meet the needs of the public and health care providers promptly;
- (3) *May include home health aides who have successfully completed a home health aide competency evaluation program approved by the State if home health aides are differentiated from nurse aides;* and
- (4) Must provide that any response to an inquiry that includes a finding of abuse, neglect, or misappropriation of property also include any statement disputing the finding made by the nurse aide.

(c) Registry Content. (1) The registry must contain at least the following information on each individual who has successfully completed a nurse aide training and competency evaluation program

- (i) The individual's full name.
- (ii) Information necessary to identify each individual;
- (iii) The date the individual became eligible for placement in the registry
- (iv) The following information on any finding by the State survey agency of abuse, neglect, or misappropriation of property by the individual:
 - (A) Documentation of the State's investigation, including the nature of the allegation and the evidence that led the State to conclude that the allegation was valid;
 - (B) The date of the hearing, if the individual chose to have one, and its outcome; and
 - (C) A statement by the individual disputing the allegation, if he or she chooses to make one; and
 - (D) This information must be included in the registry within 10 working days of the finding and must remain in the registry permanently, unless the finding was made in error, the individual was found not guilty in a court of law, or the State is notified of the individual's death.

(2) The registry must remove entries for individuals who have performed no nursing or nursing-related services for a period of 24 consecutive months, unless the individual's registry entry includes documented findings of abuse, neglect, or misappropriation of property.

- (d) Disclosure of information. The State must--
 - (1) Disclose all of the information to all requesters and may disclose additional information it deems necessary; and
 - (2) Promptly provide individuals with all information contained in the registry on them when adverse findings are placed on the registry and upon request. Individuals on the registry must have sufficient opportunity to correct any misstatements or inaccuracies contained in the registry.

The Nurse Aide Registry inquiry process enables skilled nursing facility human resource staff to check the Registry status of each prospective NAC employee during the hiring process. This check fulfills a Federal regulation [42 CFR 483.75 (e) (5)] that says that nursing facilities must inquire of the Nurse Aide Registry before employing certain staff.

Other Registries

States, such as Washington State, have developed a home care aide registry in addition to the nurse aide registry required for nursing home providers.³

All of the states in the survey have some form of sex offender registry. States such as MO, NJ, NM and NC also have an abuse, neglect and exploitation registry. MO has four different types of registries pertaining to offenders.

Criminal Background Checks

WA, like other states, provides for criminal background checks for professional caregivers. The background checks do not apply to non-professional caregivers—family, friends, neighbors—who may abuse, neglect, or exploit vulnerable adults.

The DSHS, Background Check Central Unit (BCCU) conducts background checks for agencies providing services to vulnerable adults, juveniles, and children such as:

- Nursing homes, boarding homes, and adult family homes
- Adult in-home care providers
- Child care centers, in-home child care providers
- Residential programs for children and youth
- Services for people with developmental disabilities
- DSHS contracted services

Strategies

Central Abuse Registry

Washington should consider **merging the administration of the two registries and criminal background check unit to establish a central registry**. Such a registry could contain information about qualified aides seeking employment, perpetrators, demographic data on vulnerable adults, statewide statistics related to abuse, neglect, and exploitation and other

³ **Home Care Aide Referral Registry**

The home care aide referral registry provides individuals with potential employment opportunities. Applicants must be at least 18 years old, successfully complete a background check, a face-to-face interview and an introductory course prior to being listed on a consumer/employer referral. **Registration is voluntary and is not a condition to receive or provide Medicaid services.**

information submitted by APS and RCS. The information could help with prevention or earlier intervention for vulnerable adults.

Identifying those most at risk and targeting them for case management services to prevent the abuse, neglect, or exploitation reduces repeated investigations, interaction with law enforcement agencies, and stress on the judicial system. It also may forestall reliance on other public services when the vulnerable adult is able to maintain his or her health, employment, and stable home setting.

Because the current registries in Washington State do not apply to non-professional caregivers, Washington State could follow the lead of other states who **maintain a central registry by establishing the registry for all individuals convicted of abuse, neglect, or exploitation of a vulnerable adult**. Once a person is convicted, his or her name would remain on the registry unless the court reverses its decision. Under this scenario there would be no administrative appeals or hearings procedures by DSHS regarding someone's name being placed on or potentially removed from the central registry.

Statutory and Administrative Changes

Victim's Rights

All of the states surveyed provide for Victims' Rights as participants in the judicial process. However, only two states—IN and NM—specifically provide that victims are to be treated with fairness and dignity. None of the states specifically provides for comprehensive accommodations for the victims and witnesses in the judicial process.

On August 11, 2010, the Supreme Judicial Court of Massachusetts heard the case of Ruby McDonough, Petitioner – number SJC-10609.⁴ A trial judge had ruled that Ms McDonough was not competent to testify because a stroke limited her ability to communicate. The Supreme Judicial Court of Massachusetts ruled that “....incumbent on all judges and judicial staff to ensure that every person with a disability be provided reasonable accommodation.....”

All victims and witnesses should be accorded the same opportunities to participate, without singling out any particular vulnerable population, by providing for comprehensive accommodations to assure the integrity of the judicial process.

⁴ We are cognizant of the many challenges faced in our society by individuals with disabilities, see *Tennessee v. Lane*, [541 U.S. 509](#), 516 (2004), quoting 42 U.S.C. § 12101(a)(7) (individuals with disabilities "have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society"), and of the important public policies reflected in MERA, art. 114, and the ADA to ensure that they are treated equally with other persons. Because of their vulnerabilities, persons with disabilities may often be crime victims, and their interests need protection no less than other victims. See G.L. c. 258B, § 3 (setting forth "rights" of "victims and witnesses of crime"). It is incumbent on all judges and judicial staff to ensure that every person with a disability be provided with reasonable accommodation, if available, to ensure that she can be a full and equal participant in our system of justice.

For the reasons stated above, exercising our supervisory power pursuant to G.L. c. 211, § 3, we conclude that (1) where a witness with a disability requests accommodation in order to testify, MERA requires that the court provide such accommodation, so long as it is "reasonable," G.L. c. 93, § 103 (a); (2) where there is a dispute concerning such a witness's request for accommodation, a judge should conduct a hearing to resolve the dispute, preferably before trial, and the witness should be provided with reasonable accommodation, if available, during the pretrial hearing; and (3) where a judge precludes a witness with a disability from testifying by denying a request for accommodation, the party proffering the witness, but not the witness, may appeal the judge's interlocutory ruling as a matter of right to the Appeals Court.

Strategies

Washington State should include in its victim's rights statutes a clear statement that **victims and witness shall be treated with fairness and dignity.**

In addition, Washington State should provide in its statutes that all **victims and witnesses shall be accorded all accommodations needed for each person's full participation in the judicial process** including, but not limited to, accommodations to allow each to hear, see, communicate and otherwise participate to the fullest extent possible, taking into consideration each person's physical disabilities, cognitive limitations, developmental disabilities and all other barriers to participation.

Mandatory Reporters of Abuse, Neglect, and Exploitation

Analysis

Six states, including WA, have laws that identify mandated reporters. Most common categories are licensed medical professionals, hospital employees, law enforcement, coroners, licensed social workers, therapists and similar professionals, facility or home base caregivers, licensed long term care facilities employees, and financial (banking) institution staff. Some state laws may also require others such as clergy, ombudsmen, and guardians to report suspected abuse. NC and NM laws mandate that all citizens are to report suspected adult abuse, neglect, and/or exploitation.

Strategies

WA could **consider amending its law to require all citizens to be mandated reporters**. WA could further **amend the abuse reporting law to include a special emphasis and continued requirement** for licensed professionals, providers, and financial (banking) institution staff to report suspected adult abuse, neglect, and exploitation. NM state law does have a special emphasis on the reporting requirements of financial (banking) institution staff but does not penalize them any greater than anyone else for not reporting.

NM and NC shared during their telephone interviews that it is challenging to make their state's citizenry aware that they are all mandated reporters. This appeared to be more of an educational resource/budget issue rather than lack of strategies about how to educate the public at large. Both states' APS leadership staff like and appreciate that everyone has a responsibility to "be their brother's keeper".

Penalties for failure to report and retaliation

Analysis

Six states including WA have regulations or policies that address retaliation against one who makes a report of abuse, neglect, and/or exploitation. Several states may impose a civil fine against the person/entity retaliating against the reporter.

Six states including WA have laws that penalize mandated reporters for not reporting suspected abuse, neglect, and/or exploitation. The most common penalty is a monetary fine. Three states may also refer to the licensing/professional boards for suspension or revocation of professional licenses.

All state staff interviewed (GA, MA, MO, NC, NM, and WA) have known of few, if any, actual prosecutions, convictions, and monetary penalties applied to mandated reporters neglecting their responsibilities to report or anyone retaliating against a reporter of abuse, neglect and exploitation.

Strategies

During interviews, it was discussed that it is easier and perhaps more meaningful to **report a mandated reporter's failure to report to their respective professional licensing boards**. Such boards may make the decisions to suspend or revoke their license for unprofessional and unethical conduct.

List of Recommendations

Recommendations with several options and strategies for improvement of the adult protection system are provided for Washington's administrators, policy makers, and advocates for review and final determinations. We recommend that Washington State:

- Develop APS case management for at-risk, vulnerable adults living in the community;
 - Implementation of time limited, specific case management for at-risk adults
 - Broader expansion of case management for at-risk adults when resources become available
 - May apply for a Medicaid Targeted Case Management Waiver from CMS
- Furnish APS staff with client assessment tools. (States participating in the survey are willing to share their assessment tools at no costs.);
- Centralize the intake and referral operations for the reporting of adult abuse, neglect and exploitation;
 - Upgrade IT systems of APS and RCS for data sharing
 - Upgrade phone system for centralized intake and referral operations
 - Time study to determine the number of intake and referral staff needed for the centralized intake and referral operations
 - RCS should track client recidivism data
- Expand specialized training for APS and Residential Cares Services (RCS) and develop specialized training for community partners;
 - Partner with universities to develop training curricula
 - Offer specialized training on adult abuse, neglect, and exploitation to community partners
- Develop financial and medical forensics resources;
 - Hire expert financial and medical forensics
 - Partner with community partners who have forensics staff
 - Pursue grants
 - Develop model teams to address specific problems (i.e. MA's sexual assault team)
 - Designate current staff forensics specialists as a shared resource for APS and RCS
- Improve timeliness of investigations;
 - RCS should improve response times for reports prioritized as emergencies
 - Shared responsibility by APS and RCS for emergency investigations
 - Same or similar standards of promptness for investigations by APS and RCS
 - Financial resources available for protection staff to be able to meet the immediate needs of a victim in emergency situations

- Amend statutes and/or administrative policies
 - Develop administration of a central registry for the maintenance of: persons found guilty of abusing, neglecting, and/or exploiting an adult regardless of where the victim was residing; qualified aides seeking employment; and criminal records background checks.
 - Amend victims' rights statutes to include a clear statement that victims and witness shall be treated with fairness and dignity.
 - Provide in statutes that all victims and witnesses shall be accorded all accommodations needed for each person's full participation in the judicial process.

Appendix – 1: State Interviews – GA, NC, MA, MO, NM, and WA

Appendix – 2:

- a. GA Relocation Funds
- b. GA MOU for emergency preparedness
- c. MA Sexual Assault Teams
- d. MA DPPC risk assessment tools
- e. NC 2010 state surveys of APS staff and HCBS providers
- f. NM MOU between adult protection systems

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